

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	Facility ID No. 16410
WPW Broadcasting, Inc.)	NAL/Acct. No. MB-200741410263
)	FRN: 0002834455
Licensee of Station WLBK(AM))	File No. BR-20040802AYO
DeKalb, Illinois)	

FORFEITURE ORDER

Adopted: September 17, 2010

Released: September 20, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000), to WPW Broadcasting, Inc. (“Licensee”), licensee of Station WLBK(AM), DeKalb, Illinois (“Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On March 19, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Licensee for this violation.² As noted in the NAL, Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527 of the Rules, as applicable, has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, attaching an exhibit explaining that “the issues/programs lists for the station from 2000 to the first quarter of 2004 were not timely filed in the local public file.” It stated that it had created these lists, placed them in the Station’s public file on July 15, 2004, and that it had taken steps to assure that the lists would be prepared and filed in a timely fashion in the future. The staff issued the NAL based on the fact that Licensee was responsible for 15 issues/programs lists which were missing from the Station public inspection file during the license period.³ Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on April 18, 2007.

3. In its Request, Licensee states that a reduction of the forfeiture is warranted because: (1) its case is easily distinguishable from the case cited in the NAL;⁴ (2) the penalty imposed is inconsistent with

¹ 47 C.F.R. § 73.3527.

² *WPW Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 5340 (MB 2007).

³ The Commission granted the above-referenced license renewal application on March 19, 2007.

⁴ The NAL cited *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9702 (MB 1999) (“*Padre Serra*”), for the proposition that negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation (citing *Gaffney Broadcasting, Inc.*,

(continued....)

that issued to licensees in similar situations; (3) it voluntarily disclosed its public violation; and (4) it took corrective measures to ensure future compliance with the Rules.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the “Act”),⁵ Section 1.80 of the Rules,⁶ and the Commission’s *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁸

5. Licensee argues that neither *Padre Serra* nor other Commission precedent support a \$10,000 NAL for its public file violations. Licensee asserts that the noncompliance in *Padre Serra* “was clearly far more egregious” than Licensee’s violations, because that case involved a licensee that not only had an incomplete public file but also misrepresented the completeness of its public file and denied access to the file to a member of the public.⁹ It also cites to several Media Bureau decisions involving “comparable” public file violations in which each licensee was assessed a \$3,000 forfeiture.¹⁰ Licensee thus argues that the imposition of a \$10,000 forfeiture in the instant case is inconsistent with precedent.

6. We disagree. As an initial matter, we note that the *Capstar* cases have been disavowed as inconsistent with precedent.¹¹ Here, we also disavow *Glen Iris*, where, the licensee was improperly

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Memorandum Opinion and Order, 23 FCC Rcd 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *Id.*

¹⁰ Request at 4-5. Specifically, Licensee cites to several cases in which Capstar TX Limited Partnership was issued a \$3,000 forfeiture for eleven missing issues/programs lists. See *Capstar TX Limited Partnership* (WJJS-FM), Letter, 19 FCC Rcd 2325 (MB 2004); *Capstar TX Limited Partnership* (WJXX-FM), Letter, 19 FCC Rcd 2329 (MB 2004); *Capstar TX Limited Partnership* (WROV-FM), Letter, 19 FCC Rcd 2337 (MB 2004); and *Capstar Limited Partnership* (WMJA-FM), Letter, 19 FCC Rcd 2341 (MB 2004) (collectively, the “*Capstar Cases*”). Licensee also cites to *Glen Iris Baptist School* (Station WGIB(FM), Birmingham, Alabama), Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 11234 (MB 2004) (“*Glen Iris*”); *Towson University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20223 (MB 2003); *Mid-Virginia Broadcasting Corp.* Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20183 (MB 2003) (“*Mid-Virginia*”); *Liberty University, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20115 (MB 2003) (“*Liberty University*”). To the extent that Licensee cites to Enforcement Bureau cases in which licensees were fined lesser amounts for similar violations, we note that those cases predate more recent Media Bureau precedent. Furthermore, the Media Bureau retains discretion to determine forfeiture amounts on a case-by-case basis. See 47 C.F.R. § 1.80(b)(4); see, e.g., *Gaston College*, Forfeiture Order, 25 FCC Rcd 982, 986 (EB 2010) (declining to follow Media Bureau precedent involving denial of access to station’s public file); *John Jason Bennett*, Letter, 20 FCC Rcd 17193, 17195, n.14 (MB 2005) (noting that Wireless Bureau precedent is not binding on Media Bureau).

¹¹ See *New Inspiration Broadcasting Co.*, Forfeiture Order, 24 FCC Rcd 3205 (MB 2009) (disavowing the *Capstar*, cases and affirming \$9,000 forfeiture for nine missing issues/programs lists) (“*New Inspiration*”).

assessed a \$3,000 forfeiture for its public file violations.¹² Furthermore, *Towson University*, *Mid-Virginia*, and *Liberty University* are all distinguishable from the instant case. In *Towson University*, the Bureau explicitly acknowledged in a subsequent forfeiture order that the \$3,000 amount assessed was inconsistent with prevailing precedent.¹³ *Mid-Virginia* involved an unspecified number of *incomplete* issues and programs lists and a missing issue of “the Public and Broadcasting.”¹⁴ *Liberty University* involved “some” missing issues/programs lists “from the early years” of the license term, which remained missing for the license term. An unspecified number of missing or incomplete lists over the course of the license term are not the same as in the instant case, which involves fifteen missing lists. Accordingly, we find that a \$10,000 forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of Section 73.3526 of the Rules.¹⁵

7. We also we disagree with the assertion that its disclosure of the public file violations was voluntary and therefore warranted a reduction.¹⁶ Although Licensee admitted to violating Section 73.3526, it did so only in the context of the question contained in its license renewal application that compelled such disclosure.¹⁷ Moreover, our decision is consistent with our Rules and our *Forfeiture Policy Statement* and encourages companies to voluntarily disclose violations and promptly correct violations.¹⁸

8. Finally, Licensee asserts that a reduction of its forfeiture is warranted because it implemented new measures at the Station to ensure future compliance with the public file Rule.¹⁹ We reject this

¹² *Glen Iris*, 19 FCC Rcd at 11234.

¹³ *Towson University*, Forfeiture Order, 23 FCC Rcd 8747 (MB 2008), affirming Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20223 (MB 2003) (noting that the \$3,000 forfeiture issued in the NAL for ten missing issues/programs lists was inconsistent with precedent).

¹⁴ *Mid-Virginia*, 18 FCC Rcd at 20183.

¹⁵ *Capstar TX Limited Partnership (Station WHJY(FM))*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 12715 (MB 2007) (\$10,000 forfeiture issued for 14 missing issues/programs lists); *South Atlanta Broadcasting, Inc.* Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 8471 (MB 2006) (\$10,000 forfeiture assessed for nine missing issues/programs lists); *Emerson College*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 8488 (MB 2006)(\$10,000 forfeiture assessed for fifteen missing issues/programs lists).

¹⁶ See Response at 7-8, citing *Bilingual Broadcasting Foundation, Inc.*, Letter, 21 FCC Rcd 3426 (MB 2006) (“*Bilingual Broadcasting*”).

¹⁷ See *Colby-Sawyer College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21682 (MB 2007)(admission of violation in the context of renewal application does not justify a forfeiture reduction).

¹⁸ See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Guidelines for Assessing Forfeitures. See also *Local Phone Services, Inc.*, Order of Forfeiture, 23 FCC Rcd. 8952 (2008) (finding that the issuance of a forfeiture despite petitioner's voluntary disclosure of its Rule violations was appropriate and would not discourage other parties from voluntarily disclosing violations of the Act or Rules). Since 2007, we have declined to reduce forfeiture amounts based on a licensee's disclosure in response to a question on an application because, as noted above, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal application form compelling such disclosure. See n. 17 *supra*; see also *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

¹⁹ See Response at 7-8 (citing *Bilingual Broadcasting* and *Blue Chip Licenses, LTD.*, Letter, 21 FCC Rcd 3444 (MB 2006)).

argument. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.²⁰

9. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²¹ and repeatedly²² violated Section 73.3526 of the Rules. Furthermore, we find that Licensee's arguments do not support cancellation or reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²³ that WPW Broadcasting, Inc., SHALL FORFEIT to the United States the sum of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁴ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).²⁵ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@FCC.gov and Victoria.McCauley@FCC.gov. Requests for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁶

12. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to: WPW Broadcasting, Inc., 2410 Sycamore

²⁰ *New Inspiration*, *supra* n.11; *Truman State University*, Forfeiture Order, 25 FCC Rcd 956, 959 (MB 2010). See also *Padre Serra*, 14 FCC Rcd at 9714.

²¹ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992) ("*Southern California*").

²² Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²⁴ 47 U.S.C. § 504(a).

²⁵ See 47 C.F.R. § 1.1914.

²⁶ *Id.*

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FEDERAL COMMUNICATIONS COMMISSION

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